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PUBLIC UTILITIES COMMISSION

KEAHOLE DEFENSE COALITION, INC.
73-1489 Ihumoe Street
Kailua-Kona, Hawaii 96740-7301
"Participant"

BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF HAWAII

In the Matter of the Application of HAWAII ELECTRIC LIGHT COMPANY, INC. For Approval of Rate Increases and Revised Rate Schedules.	DOCKET NO. 05-0315 KEAHOLE DEFENSE COALITION'S RESPONSIVE STATEMENT TO REBUTTAL TESTIMONY OF HAWAII ELECTRIC LIGHT COMPANY, INC.; EXHIBITS "86" AND "87"; CERTIFICATE OF SERVICE

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KEAHOLE DEFENSE COALITION'S
RESPONSIVE STATEMENT TO REBUTTAL TESTIMONY
OF HAWAII ELECTRIC LIGHT COMPANY, INC.

According to the Company, the permitting problems, delays and cost increases in question were all the result of unexpected external factors and were beyond the Company's ability to control. However, when the Commission examines the Company's statements and the record as a whole, the Commission will find that the Company relied upon a past "practice," one in which the Company was able to avoid strict compliance with agency regulations that are designed to protect the public interest. The Company's reliance upon past "practice" was neither reasonable nor prudent because the "practice" itself was neither reasonable nor prudent in the first place. The Company's "gamble" to rely on past "practice" failed and resulted in predictable delays and cost increases. Thus, the Company and not its ratepayers should be penalized for the Company's imprudence.

The Company also criticizes the public hearing process in which deficiencies in the Company's permit applications were revealed, but no permit applicant can assume that the public hearing process is a mere formality. To assume so is not prudent.

I.
RESPONSE TO REBUTTAL TESTIMONY OF HELCO PRESIDENT WARREN H.W. LEE (RT-1)

President Warren Lee sets the Company's rebuttal theme in his description of the delays and cost increases in question, stating they were extraordinary and well beyond the Company's reasonable expectation or control (e.g., Page 40, Line 17-18). However, this conclusion is for the Commission, not the Company, to make.

While he complains of the degree of community opposition that the Company encountered (e.g., Page 41, Line 24; Page 42, Line 1-15), President Lee does not mention that the Company often provoked community opposition in many instances. For example, during the environmental consulting process, a Company representative informed Keahole Agricultural Park tenants that prevailing winds come from the south (blowing air emissions away from the Agricultural Park), but tenants knew that the prevailing winds come from the north in the winter. Further, during the 1995 contested case hearing before the Board of Land and Natural Resources (BLNR), the Hearing Officer excluded evidence on the alleged need for the CT-4/CT-5 Projects at the Company's request. However, when the Hearing Officer later recommended that the BLNR deny the Company's application, the Company immediately filed documents with the BLNR

on the alleged need for the Projects without prior notice to the other parties and contrary to its earlier position. (KDC Position Statement, Page 8, footnote 12) This conduct followed the Company's attempt to cut off Peggy Ratliff's due process right to a contested case (KDC Position Statement, Page 8, footnote 12; KDC Response to HELCO IR-128) and preceded the Company's effort to solicit and obtain the "secret letter" discussed in Part C, below.

President Lee further explains that since the Commission found it reasonable for the Company to site CT-4 (and later CT-5) at the Keahole Generating Station (the "Station"), then the Company's subsequent permitting actions must be deemed to have been prudent (e.g., Page 18, Line 14-19; Page 22, Line 3-8; Page 39, Line 13-30; Page 40, Line 1-3; Page 41, Line 2-12; Page 42, Line 3-7; Page 45, Line 3-10), which is a nonsequitur. The Commission has expressed no opinion on the Company's prudence to date.

A. Reliance on Past "Practice" Was Not Prudent.

According to President Lee, the Company relied on past "practice," but when that "practice" and its deficiencies came under public scrutiny in this instance, President Lee suggests that such scrutiny and resulting opposition were "unexpected" or even unfair. The Commission must note that the community and public agencies were merely asking the Company to conform its actions to the governing law, nothing more and nothing less, especially since the Company stated it would follow all laws and rules. (KDC Response to HELCO IR-117, Part c)

B. The Commission's Ruling on the Siting of CT-4 Did Not Constitute an Advance Ruling That All Actions That the Company Took Thereafter Were Prudent.

President Warren Lee's rebuttal testimony essentially asserts that the Company's permitting actions were prudent because the Commission allowed the Company to site CT-4 (and later CT-5) at the Station (e.g., Page 18, Line 14-19; Page 22, Line 3-8; Page 39, Line 13-30; Page 40, Line 1-3; Page 41, Line 2-12; Page 42, Line 3-7; Page 45, Line 3-10). However, the Commission has made no ruling to date on the prudence of the Company's actions to obtain the permits necessary to site CT-4 (and later CT-5) at the Station.

C. The Company Cannot Rely Upon the January 1998 "Secret Letter."

The Company solicited this "secret letter" (that the 3-year completion deadline did not apply to the Company's "default" entitlement, KDC No. 25) after the circuit court ruled in December 1997/January 1998 that the Company's "default" entitlement was a CONDITIONAL entitlement, subject to certain conditions in HAR 13-2-21. (Page 50, Line 11-18) One of those conditions was the strict 3-year construction deadline in HAR 13-2-21(a)(15). (KDC No. 81) Notwithstanding that the BLNR had previously ruled in the Engelstad case and that the Company had declared in Civil 96-144K that the BLNR's 3-year deadline in HAR 13-2-21 applied to a "default" entitlement (KDC Nos. 24, 35 and 36; KDC Response to HELCO IR-131), at the Company's insistence, the BLNR's deputy director tried to unilaterally "rescind" the BLNR's ruling in Engelstad by signing the "secret letter." However, the full board later had to reaffirm

the Engelstad precedent. (KDC No. 26) The Company had no right to rely upon the "secret letter."

D. The Imprudence of the Company's Actions Was Foreseeable.

The Keahole Defense Coalition has never asserted that the Company's actions should be judged with 20/20 hindsight (e.g., Page 45, Line 26-30; Page 31, Line 1-15; Page 45, Line 11-17). To the contrary, it is the Company that is attempting to justify its actions through hindsight.

E. The Question is Not Whether the Company Would Have Encountered Greater or Lesser Opposition in a Rezoning Proceeding.

President Lee states and answers the wrong questions when he asserts that the Company would have encountered opposition to its Projects even if it chose to rezone the Station site (Page 54, Line 13-24; Page 55, Line 1-6) and that in a rezoning proceeding, project opponents would get "3 bites at the [Company's] apple." (Page 56, Line 13-16) The following are the real questions that President Lee fails to address: (1) What are the decision criteria for a rezoning proceeding, (2) what issues are relevant in a rezoning proceeding, (3) how would those rezoning issues (and public responses thereto) differ from that found in a CDUA proceeding,[1] (4) how would the scope and extent of public

[1] The Company sought a "conditional use," which is in the nature of a special exception since a power plant is not an express permitted use. A "conditional use" is defined as "a use, other than a permitted use ... which may be allowed by the board ...." (emphasis added) HAR 13-2-1.

opposition differ in a rezoning proceeding and (5) what significance would that difference have in terms of project timing?

As noted in published regulations, the decision criteria for a rezoning (reclassification) differs significantly from that for a CDUA. The BLNR Hearing Officer articulated the stipulated criteria (KDC No. 17, Page 3 and 8) to include the following:

- General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation areas may not be defined, but where urban use would be premature. HAR 13-2-14(a).
- Power generation is not a permitted use [in the general subzone] under HAR 13-2-14(c).
- The use shall be compatible with the locality and surrounding areas, and appropriate to the physical conditions and capabilities of the specific [14.9-acre] parcel or parcels of lands; [HAR 13-2-21(a)(1)]
- The existing physical and environmental aspects of the subject areas, such as ... open space characteristics, shall be preserved or improved upon ...; [HAR 13-2-21(a)(2)] (emphasis added)

As can be seen from the foregoing, a CDUA requires the decision-maker to focus primarily on preserving the open space character within the Conservation district itself. In contrast, the criteria for a rezoning (reclassification) in HAR 15-15-18 focuses on the activity on and around the land and whether it is timely to put the land into the Urban district:

> [T]he following standards shall be used:
>
> (1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;

(2) It shall take into consideration the following specific factors:

(A) Proximity to centers of trading and employment ...;

(B) Availability of basic services such as ... wastewater systems, solid waste disposal, drainage, water, transportation systems ... and police and fire protection;

In this instance, the Company had to prove that a new 58 MW baseload power plant does not consume the open space within the Company's 14.9-acre Conservation district and is otherwise compatible with the values of a Conservation district, especially since a power plant is not a permitted use in the Conservation district (KDC No. 17, Page 8 ¶ 3).

The BLNR chair obviously understood the difference between decision criteria when he informed the Company early on that the construction of the existing peaking plant between 1973 and 1988 under a CDUA (past "practice") was an historical accident and that the Company should rezone the Station site for CT-4 and CT-5. (KDC No. 13) Further, in 1990, the Company itself was aware of the BLNR's resistance to any further expansion of the Station under a CDUA (past "practice") as noted by Jeun Oda's statements. (KDC Response to HELCO IR-129)

Another critical difference between the two forms of land use entitlements in question is that a CDUP is subject to a strict 3-year construction deadline, HAR 13-2-21(a)(15), from which an extension or "deviation" is not favored, HAR 13-2-21(d) (KDC Exhibit No. 81; Response to HELCO IR-101). The deadline was

critical in this case because the Company had to obtain its final air permit within the narrow 3-year "window." In comparison, in the typical rezoning (reclassification) case, a project completion deadline is substantially longer than 3 years and is also subject to routine extension provisions. The Company ignored this major difference and could not obtain its final air permit before the 3-year "window" closed as a result.

F. Waimana Did Not Fund KDC's Participation

In its response to the Company's Information Request (HELCO IR-135), the Keahole Defense Coalition directed the Company to the discovery responses that the Coalition filed with the Company's attorneys in Civil 97-017K as to Waimana Enterprises, Inc.'s financial contributions to the Coalition. Nonetheless, President Lee resurrects the Company's early argument that this case is just a corporate battle between Waimana and the Company, that the people's interests don't count and that the individuals seeking intervention in the contested case are not entitled to the process that is due them by law.

To clear the air, the Commission should note that during the course of the relevant litigation, Waimana Enterprises, Inc. gave some of the Coalition's representatives, such as Peggy J. Ratliff and Keichi Ikeda, Christmas turkeys from Sack 'N Save (Kailua-Kona) not to exceed 15 pounds, paid for one display ad in the West Hawaii Today that cost about $1,500 (before the Coalition could complete its community fund raising efforts), purchased lunch for the Coalition's representatives at a lunch wagon in Honolulu

during a recess in one of the BLNR's meetings and also purchased lunch during recesses at the BLNR's time extension hearing conducted by Hearing Officer William Chillingworth and at other meetings.[2]

The cost of 15 pound Christmas turkeys, a lunch wagon meal and quick meals during breaks in public hearings pales in light of the sums that the Company expects its ratepayers to pay for the Company's legal expenses and for executive salaries and bonuses. At all times relevant, the Keahole Defense Coalition acted independently, raised its own funds through community contributions and donated services.

II.
RESPONSE TO REBUTTAL TESTIMONY OF SCOTT SEU (RT-15A)

In his rebuttal testimony, Scott Seu complains that if the Legislature's desired objective for public hearings are obtained, i.e, the full discussion of issues raised by the Company's air permit application and supporting data, any results of the public hearings that are unfavorable to the Company must be deemed to be "unexpected" events. (Page 2, Line 14-16) He continues that since no appeal was ever filed against a utility's air permit in Hawaii (Page 4, Line 24-25; Page 5, Line 1-5; Page 10, Line 1-23; Page 11, Line 1-25; Page 12, Line 20-25; Page 13, Line 1-25; Page 14, Line 1-10), i.e., past "practice," that fact

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[2] President Warren Lee's unsubstantiated statements, knowingly made, constitute a defamation of the personal character of the Coalition's representatives.

justified the manner in which the Company prepared its air permit application.

Although he contends that the Company did not take any "short cuts" (Page 16, Line 18-19; Page 16, Line 23-24) and that although the Company's actions were "on occasion called into question," he faults the Department of Health for requesting new met data after the September 1994 public hearing. (Page 4, Line 19-20; Page 6, Line 4-24; Page 7, Line 1-7) However, he fails to note that the purpose of a public hearing under Federal and State law is to ensure that the permitting agency has all necessary information in hand from all sources. That purpose was fulfilled through the September 1994 public hearing and the Company should have taken better precautions in the preparation of its air permit application.

He also adds that the EPA Appeals Board's decision to remand the air permit to the Department of Health was likewise unexpected because that never happened before, i.e., past "practice."

Finally, he contends that the EPA unfairly "changed its position" regarding the use of SCR to the Company's surprise (Page 4, Line 21-23; Page 8, Line 2-24; Page 9, Line 1-25; Page 10, Line 1-24; Page 18, Line 20-25; Page 19, Line 1-5), i.e., past "practice," but this statement is incomplete. The EPA had required MECO (the Company's related entity) to conduct a demonstration project for SCR on Maui. (KDC Response to HELCO IR-113, 114 and 115) Since that test seemed to have no ending date, the EPA had

seemingly lost patience with MECO and simply instructed the Company in this case that SCR is BACT.

III.
RESPONSE TO REBUTTAL TESTIMONY OF BARRY NAKAMOTO (RT-15C)

Mr. Nakamoto states that because the Company used a "pre-PSD" construction technique to install CT-3 (to build a warehouse, water treatment facility and fire protection system) and because MECO also used a "pre-PSD" construction technique in Maui (to build a warehouse and water facility upgrades) (Page 3, Line 23-25; Page 4, Line 1-5), i.e., past "practice," the Company's "pre-PSD" construction at the Station must be deemed to have been prudent. However, the Company built more than a warehouse, water treatment facility and fire protection system at the Station. (Page 4, Line 22-25; Page 5, Line 1-2) The EPA and Department of Health issued Notices of Violation because the Company also built additional improvements, such as fuel storage tank walls, an oil-water separator and pipe rack footings (KDC No. 30), and but for the stop-work orders the Company was seemingly inclined to keep building more improvements associated with CT-4 and CT-5.

Continuing on the subject of "pre-PSD" construction, Mr. Nakamoto states that the Company had relied upon the letters of authorization signed by the Department of Health and EPA, Region 9. However, as the Keahole Defense Coalition pointed out, these letters of authorization are CONDITIONAL in nature and expressly inform the Company that the Company was assuming all risks and that the Company waived any right to challenge any future PSD decision

that the EPA might render thereafter. (KDC No. 29) The Company's reliance on those letters is not justified.

Further, as to "pre-PSD" construction, Mr. Nakamoto (Page 7, Line 7-9) also suggests that the Company believed that if it constructed as much of the improvements necessary for CT-4 and CT-5 (even including improvements that went beyond the scope of permitted "pre-PSD" construction), the time that the Company saved thereby was beneficial to the Company and, hence, should be deemed to have been prudently undertaken. Such a suggestion only proves that the Company acted knowingly and without regard for the law.

On the subject of noise, Mr. Nakamoto explains that the Company was aware that there were no statewide noise regulations and relied on the BLNR's non-health based 70 dBA standard for a peaking plant, i.e., past "practice." (Page 8, Line 22-23; Page 9, Line 1-5) As to the Company's consultant report dated April 27, 1993 (KDC No. 56), he misstates the consultant's recommendation. (Page 14, Line 24-25; Page 15, Line 1-6) There, the consultant specifically stated:

> The EIR [EIS], however, failed to[,] did not recommend a noise criteria for station operations. An effective noise level criteria should be based on expected community response to the noise, applicable noise codes and engineering feasibility.
>
> * * *
>
> The DLNR has made a ruling that a 70 dBA property line sound level was acceptable at the property line [for the peaking plant operation]. This could be viewed as contrary to the DOH noise code which was developed to protect community residents .... It is not clear at this time whether the DOH would rule on the residences as "Residential" or "Agricultural," but "Residential" would be the logical choice.

* * *

CONCLUSION

It is recommended that a property line noise criteria of 45 to 50 dBA be considered for the Keahole Generating Station. ...

The Company rejected that recommendation.

As to "buffer zones," Mr. Nakamoto continues that such zones were not required for a project using a 70 dBA noise level criteria and that Mr. Ebisu, acoustic expert, worked hard to help the Company build the Projects to meet that 70 dBA standard. (Page 13, Line 4-17) This is a nonsequitur. As to the no-build zone that acoustic expert Ebisu recommended, Mr. Nakamoto offers that the Company was not obligated to secure rights from its neighbors (Page 12, Line 1-5), but could compel its neighbors not to use their land for any purpose that might be incompatible with the Company's operations. (Page 12, Line 11-17) In other words, the Company's neighbors had to accommodate the Company's needs and not the other way around.

IV.
RESPONSE TO REBUTTAL TESTIMONY OF DIZON (RT-4A)

Mr. Dizon does not explain the "similar circumstances" under which MECO used "pre-PSD" construction. (Page 26, Line 18-26) As noted in the Keahole Defense Coalition's response to Barry Nakamoto's rebuttal testimony, the circumstances were not similar. Mr. Dizon also explains the noise standard and the Company's understanding that 70 dBA was the proper noise level criteria. (Page 17, Line 24-25; page 18, Line 1-3) Again, this point is

discussed in the Keahole Defense Coalition's response to Barry Nakamoto's rebuttal testimony.

As to the guidance that the Commission gave to the Company to "maximize, rather than minimize, its strategies to meet the need for additional generation capacity on the Big Island," Mr. Dizon suggests that the Commission actually directed the Company to continue work on the CT-4 and CT-5 Projects after the Company concluded its power purchase agreement with Hamakua Energy Partners. (Page 18, Line 24, through Page 19, Line 2)

However, the Commission issued Orders 14030 and 14502 (which Orders contain the phrase "maximize, rather than minimize") long before the Company executed the power purchase agreement with Hamakua Energy Partners in 1997. The Commission issued Order 14502 (the latter of the two orders) in January 1996, during which time the Commission was concerned with the status of the Company's negotiations with Independent Power Producers. In fact, the Commission stated in its subsequent Order No. 15053, in October 1996 (Page 27-28), "[W]e emphasize our full expectations that HELCO, in its dealings with EDC and other QFs proposing projects, will fulfill its obligations within the intent and spirit of PURPA." The Company's reliance on the Commission's Orders as guidance in this case is misplaced and any argument that the Commission directed the Company to accelerate the construction of CT-4 and CT-5 is disingenuous.

V.
RESPONSE TO REBUTTAL TESTIMONY OF P.H. NAMBU (RT-9A) AND M.D. ADAMS (RT-9B)

Ms. Nambu acknowledges that AFUDC was "higher than what one would expect" and assigns the cause therefor to external factors beyond the Company's control (e.g., Page 5, Line 4-6; Page 17, Line 3-5; Page 18, Line 9-10; Page 20, Line 12-24; Page 22, Line 1-12). Mr. Adams likewise makes the same assertion and, further, cites to NARUC and FERC guidance because the State of Hawaii and the Commission do not have published guidance documents relevant to Hawaii. (Page 10, Line 3-22; Page 11, Line 1-13) Knowing that Hawaii does not have published guidance documents on point, he concludes that the Company could rely on past "practice" governing AFUDC and that the Company had operated in a "similar manner on other construction projects."

VI.
RESPONSE TO REBUTTAL TESTIMONY OF ANTHONY H. KOYAMATSU (RT-15E)

Mr. Koyamatsu states that "the Keahole project did not follow a typical construction plan or process because of the multiple starts and stops of actual construction." (Page 7, Line 7-9) Mr. Koyamatsu, however, does not discuss the foreseeability of such delays, starts, stops and changes in question and only explains what cost increases the Company sustained as a result of such delays, starts, stops and changes. He assumes that none of the delays, starts, stops and changes were attributable to the Company's imprudent decisions.

VII.
RESPONSE TO REBUTTAL TESTIMONY OF R. BEN TSUKAZAKI (RT-15F)

Much of the Keahole Defense Coalition's response to the subjects of Mr. Tsukazaki's rebuttal testimony is already covered in the Coalition's response to President Lee's rebuttal testimony. Nonetheless, the Keahole Defense Coalition makes the following responses to specific points raised by Mr. Tsukazaki.

A. THE CT-4 AND CT-5 PROJECTS WERE NEW LAND USE ACTIVITIES.

At Page 3, Line 21-23, Mr. Tsukazaki states that the Company's request for a conditional use under its CDUA "did not seek approval to introduce a new land use on the property that was undeveloped for that purpose ..." (emphasis added) However, the Company's supporting EIS for the CDUA indicated that the Company proposed to build a NEW 58 MW baseload facility to replace existing diesel generators and its peaking operations at the Station and to add new facilities and structures and convert the peaking station into an entirely new 24-hour baseload facility. The BLNR's chair specifically noted this fact and informed the Company to rezone the Station site.

At Page 4, Line 6-8, Mr. Tsukazaki also states that "given the history of the [Company's] prior entitlement [for its peaking operation], the CDUA process was the more prudent process to use in seeking approvals for additional facilities [to augment uses] that had been previously approved by the CDUP and amendments thereto." Again, this statement does not appreciate the fact that

the "additional facilities" were not mere additions, but constituted a completely NEW 58 MW 24-hour baseload facility.

B. THE STATION SITE'S STATUS AFTER LUC RECLASSIFICATION, BUT BEFORE COUNTY REZONING IS IMMATERIAL.

At Page 8, Line 22-25; Page 9, Line 1-2, Mr. Tsukazaki notes that under the zoning option during the hiatus between LUC approval and County approval, the Station site would no longer be in the Conservation district and County officials would treat the peaking facility during that hiatus as a "restricted, non-conforming use, rather than a fully permitted use" within the newly established Urban district. Even if true, this fact is not material to the issues at hand.

C. THE REBUTTAL TESTIMONY DOES NOT STATE OR ANSWER THE CORRECT QUESTIONS.

At Page 11, Line 1-21, Mr. Tsukazaki describes the land use process in general, concluding that "there are no inherent disadvantages that the CDUA process possesses," but without discussing the critical and discrete questions relevant to the issues as discussed in the Keahole Defense Coalition's response to President Lee's rebuttal testimony. Furthermore, at Page 13, Line 7-20, Mr. Tsukazaki makes no reference to the BLNR chair's comments (KDC No. 13) or Jeun Oda's statements (KDC Response to IR-129) and suggests, as does President Lee, that if "regulators [the Commission] and others" were "pressuring" the Company "to expand and improve its power generating facilities," then any act taken by

the Company must be deemed to have been "reasonable under those circumstances."

Finally, at Page 12, Line 19-20, Mr. Tsukazaki notes that the BLNR had permitted industrial uses in the Conservation district, but does not comment on the change of regulatory climate as evidenced by the BLNR's statement to Jeun Oda in 1990 and 1993 (Id.), the BLNR's 1993 Conservation District Review Project in 1993 (KDC No. 32) and ensuing Act 270 (1994). If past "practice" allowed power plant activity in the Conservation district, climate nonetheless changed and the Company was aware of this fact at all times relevant.

D. THE COMPANY HAD NO BASIS TO RELY UPON THE SECRET LETTER.

At Page 15, Line 11-14, Mr. Tsukazaki states that the Company could rely on the 1998 secret letter, the Engelstad case notwithstanding. The Keahole Defense Coalition has already discussed this point in its response to President Lee's rebuttal testimony. However, the Coalition adds that the Company goes to great lengths to explain how it relied on the BLNR's prior ruling as to noise, but then completely ignores other prior rulings of the BLNR to time deadlines and the Engelstad case.

E. THE COMPANY CANNOT BLOW HOT AND COLD.

At Page 15, Line 23-25; Page 16, Line 1-4, Mr. Tsukazaki states that it was impossible for the Company to obtain County permits because the County had insisted that the BLNR chair had to first approve the Company's construction plans. Nonetheless, the

Company had always asserted that its "default" entitlement relieved the Company from such a requirement. If County officials continued to demand that the Company comply with condition HAR 13-2-21(a)(7), the Company did nothing to compel County officials to process the Company's building permit applications and did not seek relief against County officials in Civil 96-144K.

DATED: Kailua-Kona, Hawaii, APR 28 2007.

KEAHOLE DEFENSE COALITION
"Participant"

By: Keichi Ikeda
KEICHI IKEDA
Its President

§ 205-2. *Districting and classification of lands.*

(a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;

(2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses which support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that such facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges; provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. [L 1963, c 205, pt of § 2; Supp, § 98H-2; HRS § 205-2; am L 1969, c 182, § 5; am L 1975, c 193, § 3; am L 1977, c 140,§ 1 and c 163, § 1; am L 1980, c 24, § 2; am L 1985, c 298, § 2; am L 1987, c 82, § 3; am L 1989, c 5, § 2; am L 1991, c 191, § 1; am L 1991, c 281, § 2; am L 1995, c 69, § 8]

§15-15-18 Standards for determining "U" urban district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "U" urban district, the following standards shall be used:

(1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;

(2) It shall take into consideration the following specific factors:

(A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;

(B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and

(C) Sufficient reserve areas for foreseeable urban growth;

(3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;

(4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans;

(5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans;

(6) It may include lands which do not conform to the standards in paragraphs (1) to (5):

(A) When surrounded by or adjacent to existing urban development; and

(B) Only when those lands represent a minor portion of this district;

(7) It shall not include lands, the urbanization of which will contribute toward scattered

spot urban development, necessitating unreasonable investment in public infrastructure or support services; and

(8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

SUBCHAPTER 6

DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

§15-15-77 Decision-making criteria for boundary amendments. (a) The commission shall not approve an amendment of a land use district boundary unless the commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of section 205-2, HRS, and consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

(b) In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

(1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;

(2) The extent to which the proposed reclassification conforms to the applicable district standards;

(3) The impact of the proposed reclassification on the following areas of state concern:

(A) Preservation or maintenance of important natural systems or habitats;

(B) Maintenance of valued cultural, historical, or natural resources;

(C) Maintenance of other natural resources relevant to Hawaii's economy including, but not limited to agricultural resources;

(D) Commitment of state funds and resources;

(E) Provision for employment opportunities and economic development; and

(F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;

(4) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan of the county in which the land is located;

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(5) The representations and commitments made by the petitioner in securing a boundary change, including a finding that the petitioner has the necessary economic ability to carry out the representations and commitments relating to the proposed use or development; and

(6) Lands in intensive agricultural use for two years prior to date of filing of a petition or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:

(A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or State; or

(B) Is reasonably necessary for urban growth.

(c) Amendments of a land use district boundary in conservation districts involving land areas fifteen acres or less shall be determined by the commission pursuant to this subsection and section 205-3.1, HRS.

(d) Amendments of land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.

(e) Amendments of a land use district boundary involving land areas greater than fifteen acres shall be determined by the commission, pursuant to this subsection and section 205-3.1, HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)

BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF HAWAII

In the Matter of the Application of	)	DOCKET NO. 05-0315
HAWAII ELECTRIC LIGHT COMPANY, INC.	)	CERTIFICATE OF SERVICE
For Approval of Rate Increases and Revised Rate Schedules.	)	

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below copies as set forth below of the foregoing document(s) were duly served upon the following parties via the U.S. Post Office, Kailua-Kona, Hawaii, postage prepaid, addressed as follows:

	No. of Copies
Hawaii Electric Light Company, Inc. 1200 Kilauea Avenue Hilo, HI 96729-4295	1
Division of Consumer Advocacy Department of Commerce and Consumer Affairs P.O. Box 541 Honolulu, HI 96809	5

DATED: Kailua-Kona, Hawaii, APR 28 2007.

KEAHOLE DEFENSE COALITION
"Participant"

By: Keichi Ikeda
KEICHI IKEDA
Its President

KH

KEICHI IKEDA
73-1489 Ihumoe Street
Kailua-Kona, Hawaii 96740
Telephone: (808) 325-1489

LETTER OF TRANSMITTAL

DATE: April 28, 2007

TO: PUBLIC UTILITIES COMMISSION
DEPT. OF BUDGET & FINANCE
465 S. KING STREET, ROOM 103
HONOLULU, HI 96813

FILED
2007 APR 30 P 2:28
PUBLIC UTILITIES COMMISSION

FROM: KEICHI IKEDA

RE: DOCKET NO. 05-0315

ITEM(S) BEING TRANSMITTED:

O+12: Keahole Defense Coalition, Inc.'s Responsive Statement to Rebuttal Testimony of HELCO; Exhibits (86" & "87"; C/S

( ) For your information/files
( ) For your review/comment
( ) Per your request
( ) Per our conversation
( ) For Judge's approval
( ) Courtesy copy for Judge
( ) For processing/necessary action
( ) For payment

( ) For signature in **BLACK INK** and return
( ) For signature in **BLACK INK** and forward to _____
(X) For filing/recording
( ) Check attached to cover filing/recording fee of $_____
(X) See Remarks below

REMARKS: Please return a filed copy of the above documents in the enclosed self-addressed, stamped envelope. Thank you.

Keichi Ikeda
KEICHI IKEDA